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**VIA ELECTRONIC MAIL**

Radhika Fox  
Assistant Administrator  
Office of Water  
U.S. Environmental Protection Agency  
[Fox.Radhika@epa.gov](mailto:Fox.Radhika@epa.gov)

Deborah G. Nagle  
Director, Office of Science and Technology  
Office of Water  
U.S. Environmental Protection Agency  
[Nagle.Deborah@epa.gov](mailto:Nagle.Deborah@epa.gov)

Dear Assistant Administrator Fox and Office of Water Director Nagle,

Delaware Riverkeeper Network, Citizens for Pennsylvania's Future, Clean Air Council, and Environment New Jersey (collectively, "Petitioners") greatly appreciate the Administrator of the U.S. Environmental Protection Agency's (EPA's) determination that revised water quality standards (WQS) are necessary to satisfy the requirements of the Clean Water Act (CWA) for protection of Delaware Estuary water quality and aquatic life, including the genetically unique Atlantic Sturgeon on the brink of extinction. Although we support and agree with this determination, we are concerned by the length of the proposed timeline—specifically we are concerned with EPA's decision not to propose revised WQS until twelve months from the date of the Administrator's Determination. This extended timeline is not in keeping with the CWA's statutory timelines for the development of revised WQS, nor is it in keeping with the amount of readily-available scientific information in the record developed over the past thirteen-plus years.

The Clean Water Act requires the EPA to "promptly prepare and publish" proposed water quality standards after making a determination that revised water quality standards are necessary.<sup>1</sup> Several courts have concluded that the term "promptly" must be interpreted

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<sup>1</sup> 33 U.S.C. § 1313(c)(4).  
**DELAWARE RIVERKEEPER NETWORK**  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Office: (215) 369-1188  
fax: (215) 369-1181  
[drm@delawareriverkeeper.org](mailto:drm@delawareriverkeeper.org)  
[www.delawareriverkeeper.org](http://www.delawareriverkeeper.org)

in the context of the timelines set for states to promulgate the same standards.<sup>2</sup> Those timelines anticipate that states will propose revised WQS within ninety days.<sup>3</sup> DRN/Petitioners believe that, to comply with the CWA's requirement to "promptly" publish proposed WQS, EPA should do so no later than 180 days from the date of its determination, or approximately six months.

The existing body of scientific literature and data for relevant species, particularly the critically endangered population of Delaware River Atlantic sturgeon, is more than sufficient to promptly derive fully protective dissolved oxygen criteria. As our petitions with partner organizations have emphasized in 2013 and 2021, well developed, defended and analyzed scientific study focused on the Delaware River population of Atlantic sturgeon makes clear that a criterion between 6.3 and 6.5 mg/L as an average condition is essential to support propagation and early life stage rearing of this endangered species in the Delaware Estuary.

As EPA is well aware, the effort to achieve Section 101(a) uses, to promulgate protective D.O. criteria, and to require conventional nitrification treatment at Delaware estuary wastewater treatment plants has already extended for over thirteen years. EPA has participated in essentially every meeting since 2009 deliberating these revisions. More importantly, EPA has the expertise and experience to promptly derive fully protective criteria within 180 days of the Administrator's Determination.

Petitioners full-heartedly support the Administrator's Determination. We simply request that EPA accelerate the timeline and propose new water quality standards by May 30, 2023, i.e. 180 days after making its determination. The Delaware Estuary has suffered too long from deliberation and inaction, despite knowing the causes and remedies for the inadequate standards and lethal dissolved oxygen. Indeed, the Atlantic sturgeon that depend on this river have run out of time and teeter on the brink of extinction. Prompt and protective actions are required now.

Sincerely,



Maya K. van Rossum  
the Delaware Riverkeeper  
Delaware Riverkeeper Network



Jessica O'Neill  
Senior Attorney  
PennFuture

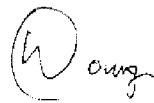
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<sup>2</sup> See, e.g., *Raymond Proffitt Found. v. U.S. E.P.A.*, 930 F. Supp. 1088, 1099-1100 (E.D. Pa. 1996) ("[O]ne or two years is clearly too long when matched with the section's stated deadlines and the provisions for review of a state's standard every three years.").

<sup>3</sup> 33 U.S.C. § 1313(c)(3).



Joseph Otis Minott, Esq.  
Executive Director and Chief  
Counsel Clean Air Council



Doug O'Malley  
Director  
Environment New Jersey

cc: Adam Ortiz, Regional Administrator, EPA Region 3  
Catherine A. Libertz, Director, Water Division, EPA Region 3  
Lisa Garcia, Regional Administrator, EPA Region 2  
Javier Laureano, Director, Water Division, EPA Region 2